THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.16525 of 2006

09.8.2006

Between:

A.Rami Reddy, S/o.A.Arjuna Reddy

… Petitioner

AND

The Government of Andhra Pradesh, represented by its Special Chief Secretary, Revenue (Assignment-IV) Department, Secretariat, Hyderabad

And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.16525 of 2006

ORDER:

The petitioner is resident of Peruru Village of Tirupathi Rural Mandal in Chittoor District. He was granted Eksal lease (lease for one year) under relevant Board Standing Orders (BSO) in respect of land admeasuring Acs.2.38 cents in survey Nos.530/1 and 599 of Peruru Village. After such Eksal lease in 1976, the petitioner allegedly cultivated the land till 1980. On 20.2.1980 the then Tahsildar, Chandragiri, took possession of land admeasuring Acs.1.50 cents. This was in turn leased out to one Raja Reddy and five others for a period of five years for running a poultry farm. The petitioner then filed appeal before the fifth respondent, who by order dated 12.10.1980 allowed the petitioner to continue Eksal lease in respect of Acs.0.88 cents of land in survey No.530/1. The petitioner was also unsuccessful in subsequent two revisions before the fourth respondent as well as second respondent. Then he approached the Government, who issued G.O.Ms.No.318, dated 06.4.1993 directing the Subordinate Authorities to restore the entire land admeasuring Acs.2.38 cents to the petitioner for the purpose of cultivation. The petitioner alleges that in spite of the orders of the Government, the same was not implemented though the petitioner approached the respondents umpteen number of

times.

The petitioner filed W.P.No.26241 of 1996 seeking direction to respondents to implement the orders of the Government in G.O.Ms. No.318, dated 06.4.1993. The writ petition was disposed of by this Court on 02.7.1998 observing that the petitioner cannot be evicted arbitrarily and that respondents can issue notice to the petitioner and pass appropriate orders. Consequent thereto, the sixth respondent issued orders on 13.12.1998 rejecting the request for implementation of the orders in G.O.Ms.No.318. The petitioner then preferred appeal before the fifth respondent, which was dismissed on 20.11.1999. Again, he preferred another appeal before the fourth respondent, who disposed of the same on 20.5.2000 directing to keep the orders to restore the land in abeyance pending clarification from the Government. Therefore, he preferred a revision petition before the second respondent, who remanded the matter to the fourth respondent on 06.9.2001. In the meanwhile, the Government of Andhra Pradesh, the first respondent, issued Memo No.39817/Assn.IV(2)/2000-5, dated 14.7.2005 cancelling the earlier orders in G.O.Ms.No.318, dated 06.4.1993 on the ground that the subject land situated abutting the road opposite to Sri Venkateswara Agricultural College, that the neighbourhood has become residential area and that the cost of the land is increased to more than Rs.30.00 lakhs per acre. Assailing the said memo of the Government, the present writ petition is filed.

Learned Counsel for the petitioner submits that the orders of the Government in G.O.Ms.No.318, is cancelled by the Government without affording an opportunity to the petitioner and, therefore, the same is illegal. Secondly, the first respondent has not applied the mind while passing the impugned memo and that the earlier orders are totally ignored in an arbitrary manner. When the Mandal Revenue Officer, Tirupathi Rural Mandal (MRO), rejected the request for implementation of the orders of the Government, the petitioner ultimately preferred revision before the second respondent, who remanded the matter to the Revenue Divisional Officer, Tirupathi, and even when the same is pending, the Government issued the impugned memo, which is unsustainable.

There is no dispute that the petitioner was granted Eksal lease in 1976. This only means that he had no right to continue in the land after lapse of one year/fasli year. In 1980, an extent of Acs.1.50 cents was taken possession and was allotted to other persons and the effort

of the petitioner to get back this Acs.1.50 cents proved futile. Though Government issued orders in revision filed by the petitioner to restore the entire land, the same was not done. It is only in 1996, the petitioner filed writ petition for implementation of the said order. This Court did not issue any Mandamus to that effect but gave liberty to the respondents to give an opportunity to the petitioner and pass appropriate orders. Thereafter, the sixth respondent rejected the request for restoration of the land. The petitioner availed the remedies available under BSO by way of appeal and revisions. Simultaneously, he also made a representation to the Government seeking necessary directions to the District Collector for implementation of the orders in G.O.Ms.No.318. A reading of the impugned order would show that the then Tahsildar cancelled the lease by proceedings dated 02.11.1979 and took possession of the land on 22.2.1980 under A.P.Land Encroachment Act, 1905. Therefore, though the Government issued orders in G.O.Ms.No.318, the petitioner was not in possession of the land even by 1980. In the meanwhile, the area surrounding the subject land has undergone changes. It ceased to be agricultural area and at present, is a residential area, as observed by the first respondent, presumably based on the report of the District Collector. The question, therefore, is whether the petitioner can enforce Eksal lease after lapse of twenty six (26) years.

There is no gainsaying that any person much less an Eksal lessee has any right to insist upon the allotment/assignment of a specified land. The allotment/assignment or lease of land depends on the nature of the land, suitability for cultivation as agricultural land and the eligibility of the person seeking such allotment. As found by the revenue officials, the land is more valuable and it can be utilized for public purpose because the neighbourhood has become a residential area. In such a case, there is no obligation on the Government to implement its orders in G.O.Ms.No.318, dated 06.4.1993 nor the petitioner can enforce the right at this point of time when he was admittedly dispossessed in 1980. Though in a different context this Court laid down that when the assigned land to a poor person is resumed by the Government for contravention of the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, there is no necessity to reassign the land to the same assignee if the land is not suitable for agriculture and is not practicable to assign the land. The relevant observations made by this Court in **P.Gopal Reddy v Mandal**

Revenue Officer[1] as under.

> It is seen from the undisputed facts that though the land in question was assigned only for the purpose of cultivation, it no longer subserves the original purpose viz., cultivation as it now became the Urban property fit for construction of houses. In fact, the transferee laid 32 plots and sought approval from the second respondent. By virtue of the changed circumstances, the petitioner will no longer be in a position to cultivate the assigned land. His transfer for the purpose of house sites again would be in contravention of not only under the terms of the grant, but also is void under the Act. Thereby, the petitioner cannot be restituted the assigned lands.

Therefore, the Government cannot be compelled by a Mandamus to restore the land to the petitioner, which is no more available for the purpose of agriculture. The submission that the impugned order violates principles of natural justice is misconceived. The Government issued impugned memo only on the representation made by the petitioner for implementation of G.O.Ms.No.318, dated 06.4.1993 and while considering the matter, it is always open to the Government to withdraw its earlier orders. In the circumstances of the case, the impugned order cannot be said to be vitiated on this ground.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

August 09, 2006.

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[1] 1990(1) An.W.R.205 = 1989(3) ALT 14 (NRC)